



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1683 of 2015

Kalanchiyam

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records relating to the impugned order of detention made in M.H.S.Confdl.No.119 of 2015, dated 25.10.2015 on the file of the District Collector and District Magistrate, Tirunelveli District, Tirunelveli, the second respondent herein, branding the detenu by name Thiru.Lakshmanan, aged about 46 years, S/o.Thangavel, as "Sand Offender" who is now confined in Central Prison, Palayamkottai and quash the impugned order of detention and set the detenu at liberty by producing the detenu before this Court.

For petitioner : Mr.R.Ilayaraja

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

ORDER

[Order of the Court was made by P.R.SHIVAKUMAR, J.]

The petitioner is the wife of the detenu. He has been detained by the second respondent by his order in Detention Order in M.H.S.Confdl.No.119 of 2015, dated 25.10.2015, holding him to be a "Sand Offender", as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.352 of 2015 registered on the file of Kadayam Police Station for offence punishable under Section 379 [Sand Theft] of the Indian Penal Code r/w Section 21(1)(4) of the Mines and Minerals [Development and Regulation] Act, 1959 and Section 3 of the Tamil Nadu Property [Prevention of Damage and Loss] Act and the following one adverse case:-

<https://hcservices.ecourts.gov.in/hcservices/>

(i). Crime No.307 of 2014 registered on the file of Kadayam Police Station for offence punishable under Section 379 [Sand Theft] of the



Indian Penal Code r/w Section 21(4) of the Mines and Minerals [Development and Regulation] Act, 1959 and Section 3 of the Tamil Nadu Property [Prevention of Damage and Loss] Act.

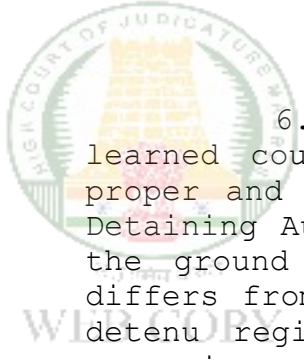
2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Sand Offender" and that his presence at large would be prejudicial to the maintenance of public order public health and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3. Though a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case was nothing but the *ipse dixit*, not supported by cogent materials. The Detaining Authority referred to the bail order granted in the first adverse case, as the basis for such subjective satisfaction. However, the Detaining Authority failed to note that the bail in the first adverse case was granted on the ground that there was no previous case, whereas the ground case differs from the first adverse case, as there was a prior case [adverse case] had been registered against the detenu prior to the registration of the ground case. Hence, on the ground of inappropriate comparison of the case to express the subjective satisfaction as to the real possibility of the detenu coming out on bail in the ground case, the order of detention is to be set aside, applying the principle laid down by the Hon'ble Supreme Court in **Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181.**

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. The Detaining Authority, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case made the following observations:-

"6. I am aware that the anticipatory bail was granted to Thiru.Lakshmanan before the Principal Sessions Court, Tirunelveli, in CRMP.No.4247/2014, on 04.09.2014, in Kadayam Police Station Crime No.307 of 2014. I am aware that Thiru Lakshmanan is in remand in Kadayam Police Station Crime No.352 of 2015 and in this case, he has not filed any bail application so far. I am aware that there is real possibility of his coming out on bail in future by filing bail application for the above cases, since in similar cases bails are granted by the appropriate Courts. I am also aware that in a similar case bail has been granted to Gandhi in CRMP.No.4245 of 2014, dated 04.09.2014 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his [Thiru Lakshmanan] coming out on bail in Kadayam Police Station Crime No.352 of 2015, since bails are granted by the appropriate Courts in such cases".



6. The above extracted portion, as rightly contended by the learned counsel for the petitioner, shows that the comparison is not proper and it may even show non-application of mind on the part of the Detaining Authority, since bail in the first adverse case was granted on the ground that there was no previous case, whereas the ground case differs from the same, insofar as there was one adverse case against the detenu registered prior to the registration of the ground case. The comparison of the first adverse case with Crime No.352 of 2015 registered on the file of Kadayam Police Station to express the subjective satisfaction of the detenu coming out on bail in the ground case is not proper. The comparison is not in tune with the dictum laid down by the Hon'ble Supreme Court in **Huidrom's** case, cited supra. Hence, on that ground alone, the subjective satisfaction of the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case can be held to be *ipse dixit*, not based on cogent materials and on that ground alone, the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 25.10.2015, made in M.H.S.Confdl.No.119 of 2015, passed by the second respondent, the District Collector and District Magistrate, Tirunelveli District and directs the release of the detenu, by name Lakshmanan, aged about 46 years, S/o.Thangavel forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Superintendent,
Central Prison, Palayamkottai.
4. The Joint Secretary to Government,
Public (Law&Order),
Fort.St.George, Chennai 600 009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

NB

TE/IGB-DP/ : 22/01/2016 : 2P/6C
<https://hcservices.ecourts.gov.in/hcservices/>

ORDER MADE IN
H.C.P (MD) No.1683 of 2015
05.01.2016